IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	Criminal No. 09-74
	)	Judge Bloch
	)	
RASHAWN EUGENE BOLTON	)	

SENTENCING MEMORANDUM

Now comes the defendant, Rashawn Eugene Bolton, through his counsel, James J. Brink, Esq., and files this Sentencing Memorandum in order to provide the Court with information upon which the Court may rely when imposing sentence on the defendant.

A. Background

The defendant and his counsel participated in a meeting with AUSA Todd Eberle and Trooper Mike Warfield during which the defendant admitted that he was responsible for the distribution of between 50-150 grams of crack cocaine. The information provided by the defendant regarding his role in his offense resulted in his change of plea to guilty which was entered on November 6, 2008.

B. The defendant requests relief from mandatory minimum sentence.

As has been stated above, pursuant to 21 U.S.C. §841(b)(1)(A)(iii), the defendant is exposed to a mandatory minimum sentence of incarceration of no less than ten years and not more than life imprisonment since the defendant admitted to distributing 50-150 grams of crack.

According to 18 U.S.C. §3553(f), relief from this mandatory minimum sentence shall be granted by the Court if the Court finds that the following factors have been met:

1. The defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines.

According to the presentence investigation report (PSI) prepared by the U.S. Probation Office, the defendant has no juvenile nor adult criminal convictions. Therefore, since the defendant has less than 1 criminal history point, he has met the factual prerequisite of this condition.

2. The defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense.

The PSI contains no factual statements that the defendant engaged in any violent behavior or that he possessed a firearm or other dangerous weapon in connection with his offense. Therefore, he has met the factual prerequisite of this condition.

3. The offense did not result in death or serious bodily injury to any person.

The PSI contains no factual statements that the defendant's conduct resulted in death or serious bodily injury to any person. Therefore, he has met the factual prerequisite of this condition.

4. The defendant was not an organizer, leader, manager, or supervisor of others in the offense and was not engaged in a continuing criminal enterprise.

The PSI contains no factual statements that the defendant engaged in the offense in the role of an organizer, leader, manager, or supervisor of others in the offense, or that the defendant was engaged in a continuing criminal enterprise.

5. The defendant has truthfully provided to the government all information and evidence he has concerning the offense.

The defendant and his counsel previously met with the attorney for the government and several government agents at which time the defendant truthfully provided all information concerning his offense and all evidence which he may have possessed. Therefore, he has met the factual prerequisites of this condition.

6. The defendant has met his burden for relief from the minimum mandatory sentence.

Based on the foregoing, the defendant respectfully submits that this Court should grant him relief from the minimum mandatory sentence pursuant to 18 U.S.C. §3553(f) and should instead consider the advisory sentencing guidelines when imposing sentence.

C. The defendant requests the Court to reconsider its ruling rejecting the defendant's request to apply a one-to-one powder cocaine/crack ratio for purposes of calculating the advisory sentencing guidelines.

The defendant previously requested the Court to disregard the powder cocaine/crack disparity when calculating the advisory sentencing guidelines. In denying the defendant's request, the Court held that "it is without legal authority to vary from the Guidelines sentencing range and apply a one-to-one crack-to-powder ratio in determining an appropriate sentence for Defendant." Tentative Findings and Rulings Concerning Disputed Facts or Factors, Page 6.

The defendant respectfully takes exception to this ruling of the Court. The Third Circuit held in ***United States v. Russell***, 564 F.3d 200 (3d Cir. 2009) that "district courts '. . . possess the power to apply a different ratio [of powder-to-crack] which, in [the district court's] judgment, corrects the disparity.'" Id. at 204.

Moreover, this Court adopted a contrary position in the pending case of ***United States v. Wallace***, No. 08-416, in which this Court cited ***United States v. Sears***, 129 S.Ct. 840, 843-44 (2009) and acknowledged that it is "entitled to reject and vary categorically from the crack-cocaine Guidelines based on a policy disagreement." More important, this Court accepted and acknowledged the five general policy objections to any disparity between crack and powder cocaine sentences set forth in ***United States v. Gully***, 619 F.Supp.2d 633 (N.D.Iowa 2009).

It also appears that the denial of the defendant's request may be based on the eligibility of the defendant to obtain relief from the minimum mandatory sentence in this case pursuant to 18 U.S.C. §3553(f) and, therefore, prevents the Court from affording any further downward variances. The defendant has been unable to find authority for the position that the granting of a safety valve request closes all other avenues of relief. Indeed, it is highly probable that there are instances where a defendant may be afforded safety valve relief and then receive an additional downward departure pursuant to U.S.S.G. §5K1.1 for providing substantial assistance to the government.

With all due respect to the Court, the defendant submits that its reasoning in the Wallace case is correct and should, therefore, be applied in this case.

D. A downward departure from the advisory sentencing guidelines is warranted.

Pursuant to 18 U.S.C.§3553(a), this Court is required to impose "a sentence sufficient, but not greater than necessary," to comply with the purposes set forth in [18 U.S.C.§3553(a)(2)]. Based on the foregoing, the defendant respectfully submits that a sentence below the advisory guidelines (A) would serve to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) would afford adequate deterrence to criminal conduct; (C) would protect the public from further crimes of the defendant; and,(D) would provide the defendant with any necessary educational or vocation training, medical care, or other correctional treatment in the most effective manner.

E. Conclusion

In conclusion, the defendant requests that this Court apply the one-to-one powder-to-crack ratio and apply the fairer and more equitable advisory sentencing guideline range of 18-24 months.

Respectfully submitted,

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s/ James J. Brink
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